

REMARKS:

Claims 1-38 are currently pending in the application.

Claims 1-38 are objected to because of certain informalities.

Claim 37 stands rejected under 35 U.S.C. § 101.

Claim 38 stands rejected under 35 U.S.C. § 112, second paragraph.

Claims 1, 4-6, 8, 9, 13, 16-18, 20, 21, 25, 28-30, 32, 33, 37, and 38 stand rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,996,589 to Jayaram et al. ("*Jayaram*").

Claims 10-12, 22-24, and 34-36 stand rejected under 35 U.S.C. § 103(a) over *Jayaram*.

Claims 7, 19, and 31 stand rejected under 35 U.S.C. § 103(a) over *Jayaram* in view of U.S. Patent No. 6,996,589 to Jennyc et al. ("*Jennyc*").

Claims 2, 14, and 26 stand rejected under 35 U.S.C. § 103(a) over *Jayaram* in view of U.S. Publication No. 2002/0046301 to Shannon et al. ("*Shannon*").

Claims 3, 15, and 27 stand rejected under 35 U.S.C. § 103(a) over *Jayaram* in view of U.S. Patent No. 6,381,709 to Casagrande et al. ("*Casagrande*").

A Notice of Non-Complaint Amendment in the subject Application was mailed to the undersigned on 11 June 2008 and provides for a response period ending 11 July 2008. Specifically, the Notice states:

the markings to indicate the changes that have been made relative to the immediate prior version are improper. Specifically, the changes in any amended claim must be shown by underlining (for added matter) or strike through (for deleted matter) with 2 exception: (1) for deletion of five characters or fewer, double brackets may be used; and (2) if strikethrough cannot be easily perceived, double brackets must be used. Claims 1 (line 14), 13 (line 13), 25 (line 13), 37 (line 14) and 38 (lines 14, 22 and 33), strikethroughs cannot be easily perceived, double brackets must be used.

(11 June 2008 Notice of Non-Compliant Amendment, Page 2). In response the Applicant is submitting this supplemental Amendment in conformity with the Notice's requirement.

The Applicants respectfully submit that all of the Applicants arguments and amendments are without prejudice or disclaimer. In addition, the Applicants have merely discussed example distinctions from the cited prior art. Other distinctions may exist, and as such, the Applicants reserve the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. The Applicants further respectfully submit that by not responding to additional statements made by the Examiner, the Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by the Applicants are considered sufficient to overcome the Examiner's rejections. In addition, the Applicants reserve the right to pursue broader claims in this Application or through a continuation patent application. No new matter has been added.

NON-STATUTORY DOUBLE PATENTING:

The Applicants thank the Examiner for withdrawing the rejection of Claims 1-6, 13-18, 25-30, and 37 under the judicially created doctrine of nonstatutory obviousness-type double patenting.

CLAIM OBJECTION:

Claims 1-38 are objected to because of certain informalities. In response, the Applicants have amended Claims 1, 13, 25, 37, and 38 to correct these certain informalities. The Applicants respectfully submit that the amendments to Claims 1, 13, 25, 37, and 38 are not necessitated by any prior art and are unrelated to the patentability of the present invention. Thus, the Applicants respectfully request that the objection of Claims 1-38 be reconsidered and that Claims 1-38 be allowed.

REJECTION UNDER 35 U.S.C. § 101:

The Applicants thank the Examiner for withdrawing the rejection of Claims 1-36, and 38 under 35 U.S.C. § 101.

Claim 37 stands rejected under 35 U.S.C. § 101, as allegedly being directed towards non-statutory subject matter. The Applicants respectfully disagree.

Nonetheless, the Applicants have amended independent Claim 37 to more particularly point out and distinctly claim the subject matter of Applicants invention. In addition, the Applicants respectfully submit that amended independent Claim 37 is directed to patentable subject matter and is clearly directed to patentable subject matter. The Applicants further respectfully submit that these amendments are not considered narrowing or necessary for patentability. By making these amendments, the Applicants do not indicate agreement with or acquiescence to the Examiner's position with respect to the rejections of Claim 37 under 35 U.S.C. § 101, as set forth in the Office Action.

For at least these reasons, Applicants respectfully submit that Claim 37 is directed to statutory subject matter. The Applicants further respectfully submit that Claim 37 is in condition for allowance. Thus, the Applicants respectfully request that the rejection of Claim 37 under 35 U.S.C. § 101 be reconsidered and that Claim 37 be allowed.

REJECTION UNDER 35 U.S.C. § 112 SECOND PARAGRAPH:

The Applicants thank the Examiner for withdrawing the rejection of Claims 1-37 under 35 U.S.C. § 112.

Claim 38 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Applicants respectfully disagree.

Nonetheless, the Applicants have amended Claim 38 to more particularly point out and distinctly claim the subject matter of the Applicants invention. By making these amendments, the

Applicants do not indicate agreement with or acquiescence to the Examiner's position with respect to the rejections of these claims under 35 U.S.C. § 112, as set forth in the Office Action.

The Applicants respectfully submit that Claim 38 are considered to be in full compliance with the requirements of 35 U.S.C. § 112. The Applicants further respectfully submit that Claims 1-38 are in condition for allowance. Thus, the Applicants respectfully request that the rejection of Claims 1-38 under 35 U.S.C. § 112 be reconsidered and that Claims 1-38 be allowed.

REJECTION UNDER 35 U.S.C. § 102(a):

Claims 1, 4-6, 8, 9, 13, 16-18, 20, 21, 25, 28-30, 32, 33, 37, and 38 stand rejected under 35 U.S.C. § 102(e) over *Jayaram*.

The Applicants respectfully submit that the *amendments to independent Claims 1, 13, 25, 37, and 38 have rendered moot the Examiner's rejection of these claims and the Examiner's arguments in support of the rejection of these claims*. The Applicants further respectfully submit that amended independent Claims 1, 13, 25, 37, and 38 in their current amended form contain unique and novel limitations that are not taught, suggested, or even hinted at in *Jayaram*. Thus, the Applicants respectfully traverse the Examiner's rejection of Claims 1, 4-6, 8, 9, 13, 16-18, 20, 21, 25, 28-30, 32, 33, 37, and 38 under 35 U.S.C. § 102(e) over *Jayaram*.

Jayaram Fails to Disclose, Teach, or Suggest Various Limitations Recited in Applicants Claims

For example, with respect to amended independent Claim 1, this claim recites:

A computer-implemented data integration system for providing bulk data transfers between one or more data stores, comprising:

a data integration server coupled with the one or more data stores, the data integration server comprising:

one or more programmatic source interfaces, each being associated with one or more source data stores coupled to the data integration server, wherein the one or more programmatic source interfaces are defined according to a common programmatic source interface specification and are exposed during a bulk data transfer, one or more data entities are extracted from the one or more source data stores for loading into one or more selected target data stores; and

one or more programmatic target interfaces, each being associated with one or more target data stores coupled to the data integration server, wherein the one or more programmatic target interfaces are defined according to a common programmatic target interface specification and *are exposed during a bulk data transfer*, the bulk data transfer enables loading of the *one or more data entities extracted from the one or more selected source data stores during the bulk data transfer*. (Emphasis Added).

Jayaram fails to disclose each and every limitation of amended independent Claims 1, 13, 25, 37, and 38.

The Applicants respectfully submit that *Jayaram* fails to disclose, teach, or suggest amended independent Claim 1 limitations regarding a “*computer-implemented data integration system for providing bulk data transfers between one or more data stores*” and in particular *Jayaram* fails to disclose, teach, or suggest amended independent Claim 1 limitations regarding a “*data integration server coupled with the one or more data stores*” comprising “*one or more programmatic source interfaces*” and “*one or more programmatic target interfaces*”.

In particular, the Examiner asserts that the cited portions of *Jayaram* disclose “*one or more programmatic source interfaces*, each being associated with one or more source data stores coupled to the data integration server, wherein the one or more programmatic source interfaces are defined according to a common programmatic source interface specification”. (13 December 2007 Office Action, Page 4). The Applicants respectfully disagree and respectfully direct the Examiner’s attention to the cited portion of *Jayaram*:

The *source data (225)* may have to be *formatted according to a predefined format* defined by a source extract format/source extract format specification (235) before it may be processed by the database conversion engine (250). The database conversion engine (250) parses the mapping specification (260) and applies these mapping instructions (260) to the source data (225)/formatted source data (237) to produce the target data (505), which may be uploaded into the target system (310) per the specifications outlined by the target schema specification (220).

(Column 11, Lines 1-5). (Emphasis Added). The above-cited portion of *Jayaram* fails to teach, suggest, or even hint at “*one or more programmatic source interfaces*, each being associated

with one or more source data stores coupled to the data integration server, wherein the one or more programmatic source interfaces are defined according to a common programmatic source interface specification”, as recited in amended independent Claim 1. For example, the above-cited portion of *Jayaram* merely discloses that the “***source data (225)*** may have to be ***formatted according to a predefined format***” prior to being “processed by the database conversion engine (250)”. (Column 11, Lines 1-5). (Emphasis Added). However, even though the “***source data (225)***” may have to be formatted and even though the “***source data (225)***” may have to be “processed by the database conversion engine (250)”, this ***does not include, involve, or even relate to one or more programmatic source interfaces***, each being associated with one or more source data stores coupled to the data integration server, wherein the one or more programmatic source interfaces are defined according to a common programmatic source interface specification, as recited in amended independent Claim 1. (Column 11, Lines 1-5). (Emphasis Added).

The Applicants respectfully submit that it is simply not clear how the above-cited portion of *Jayaram* teaches, suggests, or even hints at amended independent Claim 1 limitation regarding “***one or more programmatic source interfaces***, each being associated with one or more source data stores coupled to the data integration server, wherein the one or more programmatic source interfaces are defined according to a common programmatic source interface specification and ***are exposed during a bulk data transfer, one or more data entities are extracted*** from the one or more source data stores ***for loading into one or more selected target data stores***” (i.e., what ***programmatic source interfaces*** in *Jayaram* is being ***exposed*** and which ***data entities*** in *Jayaram* ***are extracted for loading into one or more selected target data stores***). Thus, the Applicants respectfully submit that the equations forming the foundation of the Examiner’s comparison between *Jayaram* and amended independent Claim 1 cannot be made. The Applicants further respectfully submit that these distinctions alone are sufficient to patentably distinguish amended independent Claim 1 from *Jayaram*.

The Applicants respectfully submits that a prior art reference (here *Jayaram*) anticipates the claimed invention under 35 U.S.C. § 102 ***only if each and every element of a claimed invention is identically shown*** in that single reference (here *Jayaram*). MPEP § 2131. (Emphasis Added). With respect to the subject Application, *Jayaram* fails to identically disclose “***one or more***

programmatic source interfaces” that are “associated with one or more source data stores coupled to the data integration server” and that are “defined according to a common programmatic source interface specification” and that are further “*exposed during a bulk data transfer*”. In fact, the Examiner is silent as to, at least the deficiency in *Jayaram* regarding “*one or more programmatic source interfaces*” that are “associated with one or more source data stores coupled to the data integration server” and that are “defined according to a common programmatic source interface specification” and that are further “*exposed during a bulk data transfer*” by not providing anything more than a mere reference to a column and line number in *Jayaram* without providing any further explanation as to how *Jayaram* overcomes this deficiency.

Thus, the Applicants respectfully submit that *the Office Action fails to establish a prima facie case of anticipation of Independent Claim 1 under 35 U.S.C. § 102 with respect to Jayaram* because *Jayaram* fails to identically disclose each and every element of the Applicants claims, arranged as they are in Applicants claims. The Applicants further respectfully submit that these distinctions alone are sufficient to patentably distinguish amended independent Claim 1 from *Jayaram*.

In addition, the Examiner asserts that the cited portions of *Jayaram* disclose “*one or more programmatic target interfaces*, each being associated with one or more target data stores coupled to the data integration server, wherein the one or more programmatic target interfaces are defined according to a common programmatic target interface specification and *are exposed during a bulk data transfer*, the bulk data transfer enables loading of the *one or more data entities extracted from the one or more selected source data stores during the bulk data transfer*”. (13 December 2007 Office Action, Page 5). The Applicants respectfully disagree and respectfully direct the Examiner’s attention to the cited portion of *Jayaram*:

The database conversion engine (250) parses the mapping specification (260) and applies these mapping instructions (260) to the source data (225)/formatted source data (237) *to produce the target data (505)*, which may be uploaded into the target system (310) per the specifications outlined by the target schema specification (220).

(Column 11, Lines 5-11). (Emphasis Added). The above-cited portion of *Jayaram* fails to teach, suggest, or even hint at “***one or more programmatic target interfaces***, each being associated with one or more target data stores coupled to the data integration server, wherein the one or more programmatic target interfaces are defined according to a common programmatic target interface specification and ***are exposed during a bulk data transfer***, the bulk data transfer enables loading of the ***one or more data entities extracted from the one or more selected source data stores during the bulk data transfer***”, as recited in amended independent Claim 1. For example, the above-cited portion of *Jayaram* merely discloses that the “***target data (505)***” is merely produced by applying “mapping instructions (260)” to the “source data (225)”. (Column 11, Lines 5-11). (Emphasis Added). However, even though the “mapping instructions (260)” may be applied to the “source data (225)” and even though “***target data (505)***” may be produced, this ***does not include, involve, or even relate to one or more programmatic target interfaces***, each being associated with one or more target data stores coupled to the data integration server, wherein the one or more programmatic target interfaces are defined according to a common programmatic target interface specification and ***are exposed during a bulk data transfer***, the bulk data transfer enables loading of the ***one or more data entities extracted from the one or more selected source data stores during the bulk data transfer***, as recited in amended independent Claim 1. (Column 11, Lines 5-11). (Emphasis Added).

The Applicants respectfully submit that it is simply not clear how the above-cited portion of *Jayaram* teaches, suggests, or even hints at amended independent Claim 1 limitation regarding “***one or more programmatic target interfaces***, each being associated with one or more target data stores coupled to the data integration server, wherein the one or more programmatic target interfaces are defined according to a common programmatic target interface specification and ***are exposed during a bulk data transfer***, the bulk data transfer enables loading of the ***one or more data entities extracted from the one or more selected source data stores during the bulk data transfer***” (i.e., what ***programmatic target interfaces*** in *Jayaram* is being ***exposed*** and which ***one or more data entities*** in *Jayaram* are ***extracted from the one or more selected source data stores during the bulk data transfer***). Thus, the Applicants respectfully submit that the equations forming the foundation of the Examiner’s comparison between *Jayaram* and amended independent Claim 1 cannot be made. The Applicants further respectfully submit that these

distinctions alone are sufficient to patentably distinguish amended independent Claim 1 from *Jayaram*.

The Applicants respectfully submits that a prior art reference (here *Jayaram*) anticipates the claimed invention under 35 U.S.C. § 102 ***only if each and every element of a claimed invention is identically shown*** in that single reference (here *Jayaram*). MPEP § 2131. (Emphasis Added). With respect to the subject Application, *Jayaram* fails to identically disclose “***one or more programmatic target interfaces***” that are “associated with one or more target data stores coupled to the data integration server” and that are “defined according to a common programmatic target interface specification” and that are further “exposed during a bulk data transfer”. In fact, the Examiner is silent as to, at least the deficiency in *Jayaram* regarding “***one or more programmatic target interfaces***” that are “associated with one or more target data stores coupled to the data integration server” and that are “defined according to a common programmatic target interface specification” and that are further “exposed during a bulk data transfer” by not providing anything more than a mere reference to a column and line number in *Jayaram* without providing any further explanation as to how *Jayaram* overcomes this deficiency.

Thus, the Applicants respectfully submit that ***the Office Action fails to establish a prima facie case of anticipation of independent Claim 1 under 35 U.S.C. § 102 with respect to Jayaram*** because *Jayaram* fails to identically disclose each and every element of the Applicants claims, arranged as they are in Applicants claims. The Applicants further respectfully submit that these distinctions alone are sufficient to patentably distinguish amended independent Claim 1 from *Jayaram*.

The Office Action Fails to Properly Establish a *Prima Facie* case of Anticipation over *Jayaram*

The Applicants respectfully submit that the allegation in the present Office Action that *Jayaram* discloses all of the claimed features is respectfully traversed. Further, it is noted that the Office Action provides no concise explanation as to how *Jayaram* is considered to anticipate all of the limitations in Applicants Claims. ***A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if each and every element of a claimed invention is identically shown in that single reference.*** MPEP § 2131. (Emphasis Added).

With respect to the subject application, the Examiner has not adequately supported the rejection under 35 U.S.C. § 102, because the Examiner has not shown how each and every element of the Applicants claimed invention is identically shown in *Jayaram*. For example, the Examiner asserts that “*one or more programmatic source interfaces*”, in amended independent Claim 1 is somehow equivalent to *source data* (225). (13 December 2007 Office Action, Page 4). The Applicants respectfully disagree and further respectfully request clarification as to how the Examiner arrives at this conclusion. In another example, the Examiner asserts that the “*programmatic source interfaces*”, in amended independent Claim 1 is somehow equivalent to *exposed* in *Jayaram*. (13 December 2007 Office Action, Page 4). The Applicants respectfully disagree and further respectfully request clarification as to how the Examiner arrives at this conclusion. In still another example, the Examiner asserts that the “*programmatic source interfaces*”, in amended independent Claim 1 is somehow *extracted for loading into one or more selected target data stores* in *Jayaram*. (13 December 2007 Office Action, Page 4). The Applicants respectfully disagree and further respectfully request clarification as to how the Examiner arrives at this conclusion.

The Applicants respectfully points out that "it is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." Ex parte Levy, 17 U.S.P.Q.2d (BNA) 1461, 1462 (Pat. & Tm. Off. Bd. Pat. App. & Int. 1990). The Applicants respectfully submits that *the Office Action has failed to establish a prima facie case of anticipation in Applicants Claims under 35 U.S.C. § 102 with respect to Jayaram because Jayaram fails to identically disclose each and every element of the Applicants claimed invention, arranged as they are in Applicants claims.*

The Applicants Claims are Patentable over *Jayaram*

Amended independent Claims 1, 13, 25, 37, and 38 are considered patentably distinguishable over *Jayaram* for at least the reasons discussed above in connection with amended independent Claim 1.

Furthermore, with respect to dependent Claims 4-6, 8, 9, 16-18, 20, 21, 28-30, 32, and 33: Claims 4-6, 8, and 9 depend from amended independent Claim 1; Claims 16-18, 20, and 21 depend

from amended independent Claim 13; and Claims 28-30, 32, and 33 depend from amended independent Claim 25 and are also considered patentably distinguishable over *Jayaram*. Thus, dependent Claims 4-6, 8, 9, 16-18, 20, 21, 28-30, 32, and 33 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

Thus, for at least the reasons set forth herein, the Applicants respectfully submit that Claims 1, 4-6, 8, 9, 13, 16-18, 20, 21, 25, 28-30, 32, 33, 37, and 38 are not anticipated by *Jayaram*. The Applicants further respectfully submit that Claims 1, 4-6, 8, 9, 13, 16-18, 20, 21, 25, 28-30, 32, 33, 37, and 38 are in condition for allowance. Thus, the Applicants respectfully request that the rejection of Claims 1, 4-6, 8, 9, 13, 16-18, 20, 21, 25, 28-30, 32, 33, 37, and 38 under 35 U.S.C. § 102 (e) be reconsidered and that Claims 1, 4-6, 8, 9, 13, 16-18, 20, 21, 25, 28-30, 32, 33, 37, and 38 be allowed.

THE LEGAL STANDARD FOR ANTICIPATION REJECTIONS UNDER 35 U.S.C. § 102:

The following sets forth the legal standards for "anticipation."

The events that can lead to anticipation can be divided into the following seven categories, all defined by statute:

1. **Prior Knowledge**: The invention was publicly known in the United States before the patentee invented it.
2. **Prior Use**: The invention was publicly used in the United States either (i) before the patentee invented it; or (ii) more than one year before he filed his patent application.
3. **Prior Publication**: The invention was described in a printed publication anywhere in the world either (i) before the patentee invented it; or (ii) more than one year before he filed his patent application.
4. **Prior Patent**: The invention was patented in another patent anywhere in the world either (i) before the patentee invented it; or (ii) more than one year before he filed his application.

5. On Sale: The invention was on sale in the United States more than one year before the patentee filed his application.

6. Prior Invention: The invention was invented by another person in the United States before the patentee invented it, and that other person did not abandon, suppress or conceal the invention.

7. Prior U.S. Patent: The invention was described in a patent granted on a patent application filed in the United States before the patentee made the invention.

Each of those seven events has its own particular requirements, but they all have the following requirements in common:

1. Anticipation must be shown by clear and convincing evidence.
2. If one prior art reference completely embodies the same process or product as any claim, the product or process of that claim is anticipated by the prior art, and that claim is invalid. To decide whether anticipation exists, one must consider each of the elements recited in the claim and determine whether all of them are found in the particular item alleged to be anticipating prior art.
3. There is no anticipation unless every one of those elements is found in a *single* prior publication, prior public use, prior invention, prior patent, prior knowledge or prior sale. One may not combine two or more items of prior art to make out an anticipation. One should, however, take into consideration, not only what is expressly disclosed or embodied in the particular item of prior art, but also what inherently occurred in its practice.
4. There cannot be an accidental or unrecognized anticipation. A prior duplication of the claimed invention that was accidental, or unrecognized, unappreciated, and incidental to some other purpose is not an invalidating anticipation.

Those four requirements must be kept in mind and applied to each kind of anticipation in issue. The following additional requirements apply to some categories of anticipation.

1. Prior Knowledge: An invention is anticipated if it was known by others in the United States before it was invented by the patentee. "Known," in this context, means known to the public. Private knowledge, secret knowledge or knowledge confined to a small, limited group is not necessarily an invalidating anticipation. Things that were known to the public only outside the United States are not invalidating anticipation.

2. Prior Use: An invention is anticipated if it was used by others before it was invented by the patentee, or more than one year before the patentee filed his patent application. "Use," in this context, means a public use.

3. Prior Publication: A patent is invalid if the invention defined by the Claims was described in a printed publication before it was invented by the patentee or more than one year prior to the filing date of his application. For a publication to constitute an anticipation of an invention, it must be capable, when taken in conjunction with the knowledge of people of ordinary skill in the art, of placing the invention in the possession of the reader. The disclosure must be enabling and meaningful. In determining whether the disclosure is complete, enabling, and meaningful, one should take into account what would have been within the knowledge of a person of ordinary skill in the art at the time, and one may consider other publications that shed light on the knowledge such a person would have had.

4. Prior Patent: If the invention defined by the claims was patented in the United States or a foreign country, either before it was invented by the inventor or more than one year before the inventor filed his patent application, then the invention was anticipated. The effective date for this type of anticipation is the date on which two things co-existed: (i) the owner of the referenced patent had the right to enforce that patent; and (ii) the reference patent was available to the public. What was "patented" in the reference patent is determined by what is defined by its claims, interpreted in the light of the general description.

5. On Sale: A patent is invalid if the invention claimed in it was on sale in the United States more than one year prior to the application filing date.

6. Prior Invention: If the invention defined by the claims was invented by another person, in the United States, before it was invented by the inventor, and that other person did not

abandon, suppress, or conceal the invention, the invention lacks novelty. A prior invention, even if put in physical form and shown to produce the desired result, is not an invalidating anticipation unless some steps were taken to make it public. However, it is not necessary that the inventor had knowledge of that prior invention.

7. Prior U.S. Application: A patent is invalid for lack of novelty if the invention defined by the claims was described in a United States patent issued on a patent application filed by another person before the invention was made by the inventor. The effective date of a prior application for purposes of this issue is the date on which it was filed in the United States. Foreign-filed patent applications do not apply. If the issued United States patent claims the benefit of more than one United States application, its effective date as an anticipation is the filing date of the first United States application that discloses the invention claimed in that referenced patent.

Experimental Use Exception: The law recognizes that it is beneficial to permit the inventor the time and opportunity to develop his invention. As such there is an "experimental use" exception to the "public use" and "on sale" rules. Even though the invention was publicly used or on sale, more than one year prior to the application filing date, that does not invalidate the patent, provided the principal purpose was experimentation rather than commercial benefit. If the primary purpose was experimental, it does not matter that the public used the invention or that the inventor incidentally derived profit from it.

When a public use or sale is shown, the burden is on the inventor to come forward with evidence to support the experimental use exception. Only experimentation by or under the control of the inventor qualifies for this exception. Experimentation by a third party, for its own purposes, does not qualify for this exception. Once the invention leaves the inventor's control, its use is a public one, even if further experimentation takes place.

The experimentation must relate to the claimed features of the invention. And it must be for the purpose of technological improvement, not commercial exploitation. If any commercial exploitation does occur, it must be merely incidental to the primary purpose of experimentation. A test done primarily for marketing, and only incidentally for technological improvement, is a public use.

REJECTION UNDER 35 U.S.C. § 103(a):

Claims 10-12, 22-24, and 34-36 stand rejected under 35 U.S.C. § 103(a) over *Jayaram*. Claims 7, 19, and 31 stand rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,996,589 to *Jayaram* in view of *Jennyc*. Claims 2, 14, and 26 stand rejected under 35 U.S.C. § 103(a) over *Jayaram* in view of *Shannon*. Claims 3, 15, and 27 stand rejected under 35 U.S.C. § 103(a) over *Jayaram* in view of *Casagrande*. The Applicants respectfully disagree. Thus, the Applicants respectfully traverse the Examiner's obvious rejection of Claims 2, 3, 7, 10-12, 14, 15, 19, 22-24, 26, 27, 31, and 34-36 under 35 U.S.C. § 103(a) over the proposed combination of *Jayaram*, *Jennyc*, *Shannon*, and *Casagrande*, either individually or in combination.

The Office Action Acknowledges that *Jayaram* Fails to Disclose Various Limitations Recited in Applicants Claims

The Applicants respectfully submit that the Office Action acknowledges, and the Applicants agree, that *Jayaram* fails to disclose various limitations recited in amended independent Claim 1. Specifically the Examiner acknowledges that *Jayaram* fails to teach “*convert only if necessary because the first and second formats are different*”, “*relational interfaces*”, “*release of interface*”, “*when to release interface*”, “*Java interfaces*”, and “*industry standard interface and industry standard protocol*”. (13 December 2007 Office Action, Pages 8-12). (Emphasis Added). However, the Examiner asserts that the cited portions of *Jennyc*, *Shannon*, and *Casagrande* disclose the acknowledged shortcomings in *Jayaram*. The Applicants respectfully traverse the Examiner's obvious rejection of Claims 2, 3, 7, 10-12, 14, 15, 19, 22-24, 26, 27, 31, and 34-36 under 35 U.S.C. § 103(a) over the proposed combination of *Jayaram*, *Jennyc*, *Shannon*, and *Casagrande*, either individually or in combination.

The Office Action Fails to Properly Establish a *Prima Facie* case of Obvious over the Proposed *Jayaram-Jennyc-Shannon-Casagrande* Combination According to the UPSTO Examination Guidelines

The Applicants respectfully submit that the Office Action fails to properly establish a *prima facie* case of obviousness based on the proposed combination of *Jayaram*, *Jennyc*, *Shannon*, or *Casagrande*, either individually or in combination, and in particular, the Office Action fails to

establish a *prima facie* case of obviousness based on the “Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*” (the “Guidelines”).

As reiterated by the Supreme Court in *KSR International Co. v. Teleflex Inc.* (*KSR*), the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.* (383 U.S. 1, 148 USPQ 459 (1966)). Obviousness is a question of law based on underlying factual inquiries. These factual inquiries enunciated by the Court are as follows:

- (1) Determining the scope and content of the prior art;
- (2) Ascertaining the differences between the claimed invention and the prior art; and
- (3) Resolving the level of ordinary skill in the pertinent art.

(Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). Objective evidence relevant to the issue of obviousness must be evaluated by Office personnel. (383 U.S. 17–18, 148 USPQ 467 (1966)). As stated by the Supreme Court in *KSR*, “While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.” (*KSR*, 550 U.S. at ___, 82 USPQ2d at 1391).

However, it is important to note that the Guidelines require that Office personnel “***ensure that the written record includes findings of fact*** concerning the state of the art and the teachings of the references applied. (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). In addition, the Guidelines remind Office personnel that the “***factual findings made by Office personnel are the necessary underpinnings to establish obviousness.***” (*id.*). Further, “***Office personnel must provide an explanation to support an obviousness rejection*** under 35 U.S.C. 103. (*id.*). In fact, “35 U.S.C. 132 requires that the applicant be notified of the reasons for the rejection of the claim so that he or she can decide how best to proceed” and “clearly setting forth findings of fact and the rationale(s) to support a rejection in an Office action leads to the prompt resolution of issues pertinent to patentability.” (*id.*).

With respect to the subject application, the Office Action has not shown the ***factual findings necessary to establish obviousness*** or even ***an explanation to support the obviousness rejection***

based on the proposed combination of *Jayaram, Jennyc, Shannon, and Casagrande*. The Office Action merely states that “it would have been obvious to one having ordinary skill in the art at the time of the invention was made to include: 1) “conversion of data only if the first and second formats are different”; 2) “relational interface as alternative of programmatic interface”; and 3) release the interface after the data transfer”. (13 December 2007 Office Action, Pages 8-10). The Applicants respectfully disagree and respectfully submit that the Examiner’s conclusory statement is not sufficient to establish the *factual findings necessary to establish obviousness* and is not a sufficient *explanation to support the obviousness rejection* based on the proposed combination of *Jayaram, Jennyc, Shannon, and Casagrande*.

The Guidelines further provide guidance to Office personnel in “determining the scope and content of the prior art” such as, for example, “Office personnel must first obtain a thorough understanding of the invention disclosed and claimed in the application.” (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). The scope of the claimed invention must be clearly determined by giving the claims the “broadest reasonable interpretation consistent with the specification.” (See *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) and MPEP § 2111.). In addition, the Guidelines state that any “*obviousness rejection should include*, either explicitly or implicitly in view of the prior art applied, *an indication of the level of ordinary skill*.” (Notice, 72 Fed. Reg. 57528 (Oct. 10, 2007)). With respect to the subject Application, the Office Action has not provided *an indication of the level of ordinary skill*.

The Guidelines still further provide that once the *Graham* factual inquiries are resolved, Office personnel must determine whether the claimed invention would have been obvious to one of ordinary skill in the art. (*Id.*). For example, the Guidelines state that *Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art*. (*Id.*). In addition, the Guidelines state that the proper analysis is *whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts*. (*Id.* and See 35 U.S.C. 103(a)).

With respect to the subject Application, the Office Action has not expressly resolved any of the *Graham* factual inquiries to determine whether Applicants invention would have been obvious to one of ordinary skill in the art. In addition, the Office Action fails to *explain why the*

difference(s) between the proposed combination of Jayaram, Jennyc, Shannon, Casagrande, and the Applicants claimed invention would have been obvious to one of ordinary skill in the art. The Office Action merely states that “in order to avoid inefficient process of conversion between data stores of the same format”, “it would allow backup interface for performing the functions of the programmatic interfaces in case of failure in the programmatic interface” and “in order to avoid interruption during the transfer of the data.” (13 December 2007 Office Action, Pages 8-10). The Applicants respectfully disagree and further respectfully request clarification as to how this statement *explains why the difference(s) between the proposed combination of Jayaram, Jennyc, Shannon, Casagrande, and the Applicants claimed invention would have been obvious to one of ordinary skill in the art.* The Applicants further respectfully submit that the Examiner is using the subject Application as a template to formulate reconstructive hindsight, which constitutes impermissible use of hindsight under 35 U.S.C. § 103(a).

The Guidelines yet further state that the “key to supporting any rejection under 35 U.S.C. 103 is the *clear articulation of the reason(s) why the claimed invention would have been obvious.*” (Notice, 72 Fed. Reg. 57528 (Oct. 10, 2007)). In fact, the Supreme Court in *KSR* noted that “*the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.*” (*id.*). The Court quoting *In re Kahn* (441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)), stated that “[R]ejections on *obviousness cannot be sustained by mere conclusory statements*; instead, there *must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.*” (*KSR*, 550 U.S. at ___, 82 USPQ2d at 1396). The Guidelines provide the following seven rationales:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other

- market forces if the variations would have been predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

The Applicants respectfully submit that the *Office Action fails to provide any articulation, let alone, clear articulation of the reasons why the Applicants claimed invention would have been obvious*. For example, the *Examiner has not adequately supported the selection and combination of Jayaram, Jennyc, Shannon, and Casagrande to render obvious the Applicants claimed invention*. The Examiner's unsupported conclusory statements that "it would have been obvious to one having ordinary skill in the art at the time of the invention was made to include: 1) "conversion of data only if the first and second formats are different"; 2) "relational interface as alternative of programmatic interface"; and 3) release the interface after the data transfer", "in order to avoid inefficient process of conversion between data stores of the same format", "it would allow backup interface for performing the functions of the programmatic interfaces in case of failure in the programmatic interface" and "in order to avoid interruption during the transfer of the data", *does not adequately provide clear articulation of the reasons why the Applicants claimed invention would have been obvious*. (13 December 2007 Office Action, Pages 8-10). In addition, the Examiner's unsupported conclusory statement fails to meet any of the Guidelines rationales to render obvious the Applicants claimed invention.

Thus, if the Examiner continues to maintain the obvious rejection based on the proposed combination of *Jayaram, Jennyc, Shannon, and Casagrande*, the Applicants respectfully request that the Examiner provide proper support for the obviousness rejection under 35 U.S.C. 103 as necessitated by the Guidelines, including an explicit analysis of the rationale relied upon by the Examiner.

The Applicants Claims are Patentable over the Proposed *Jayaram-Jennyc-Shannon-Casagrande* Combination

The Applicants respectfully submit that as discussed above, amended independent Claims 1, 13, 25, 37, and 38 are considered patentably distinguishable over *Jayaram*.

Furthermore, with respect to dependent Claims 2, 3, 7, 10-12, 14, 15, 19, 22-24, 26, 27, 31, and 34-36: Claims 2, 3, 7, and 10-12 depend from amended independent Claim 1; Claims 14, 15, 19, and 22-24 depend from amended independent Claim 13; and Claims 26, 27, 31, and 34-36 depend from amended independent Claim 25. As mentioned above, each of amended independent Claims 1, 13, 25, 37, and 38 are considered patentably distinguishable over the proposed combination of *Jayaram*, *Jennyc*, *Shannon*, and *Casagrande*, either individually or in combination. Thus, dependent Claims 2, 3, 7, 10-12, 14, 15, 19, 22-24, 26, 27, 31, and 34-36 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

For at least the reasons set forth herein, the Applicants respectfully submit that Claims 2, 3, 7, 10-12, 14, 15, 19, 22-24, 26, 27, 31, and 34-36 are not rendered obvious by the proposed combination of *Jayaram*, *Jennyc*, *Shannon*, and *Casagrande*. The Applicants further respectfully submit that Claims 2, 3, 7, 10-12, 14, 15, 19, 22-24, 26, 27, 31, and 34-36 are in condition for allowance. Thus, the Applicants respectfully request that the rejection of Claims 2, 3, 7, 10-12, 14, 15, 19, 22-24, 26, 27, 31, and 34-36 under 35 U.S.C. § 103(a) be reconsidered and that Claims 2, 3, 7, 10-12, 14, 15, 19, 22-24, 26, 27, 31, and 34-36 be allowed.

CONCLUSION:

In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

Because this Supplemental Amendment is filed prior to the ending of the response period 11 July 2008 of the Notice of Non-Complaint Amendment mailed on 11 June 2008, no additional fees are deemed to be necessary; however, the undersigned hereby authorizes the Commissioner to charge any additional fees that may be required, or credit any overpayments, to **Deposit Account No. 500777**. Although the Applicants believe no additional fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777**.

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

7 July 2008
Date

/Steven J. Laureanti/signed
Steven J. Laureanti, Registration No. 50,274

BOOTH UDALL, PLC
1155 W. Rio Salado Pkwy., Ste. 101
Tempe AZ, 85281
214.636.0799 (mobile)
480.830.2700 (office)
480.830.2717 (fax)
steven@boothudall.com

CUSTOMER NO. 53184